IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10517 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

FAKIR NAJIR MUSTUFA

Versus

DISTRICT MAGISTRATE

Appearance:

MR ANIL S DAVE for Petitioner

MR KT DAVE, AGT, for Respondents.

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 17/04/2000

ORAL JUDGEMENT

1. District Magistrate, Bhavnagar, passed an order on October 30, 1999, in exercise of power under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner-Fakir Najir Mustufa under the provisions of

the said Act.

2. The detaining authority took into consideration four offences registered against the detenu as well as statements of three anonymous witnesses recorded on 23rd and 24th October, 1999, in respect of incidents dated 2nd, 7th and 16th October, 1999. The detaining authority found that the incidents narrated by the witnesses and the fear expressed by them are correct and genuine and, therefore, anonymity is required to be maintained in respect of identity of these witnesses in exercise of powers under Section 9(2) of the PASA Act. The authority, after considering less drastic remedy, concluded that the petitioner is required to be detained under the PASA Act, as he is required to be immediately prevented from pursuing his illegal and anti-social activities, which are detrimental to public order.

3. The detenu-petitioner challenges the order of detention on various grounds. However, Ms. Datta, learned advocate appearing for the petitioner, has made following submissions.

3.1 Ms. Datta submitted that the statements of anonymous witnesses have been verified by the detaining authority by putting one word verification on October 30, 1999 and on the same day, the order is passed. She submitted that, therefore, there is improper exercise of powers under Section 9(2) of the PASA Act. This has affected the right of the detenu of making an effective representation.

3.2 Ms. Datta further submitted that, so far as the registered offences against the detenu are concerned, two of them relate to offences of theft and they do not indicate any disturbance to public order. So far as other offences relating to Sections 324 and 394 of Indian Penal Code are concerned, they also do not indicate any disturbance to public order and, therefore, the subjective satisfaction recorded by the detaining authority about the activities of the detenu being detrimental to public order is ill-founded. The petition may, therefore, be allowed by quashing the order of detention.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition. According to him, the order is passed on subjective satisfaction of the detaining authority. As many as four offences are registered against the detenu and there are statements of three anonymous witnesses which indicate disturbance to

public order. The petition, therefore, may be dismissed.

5. Having regard to rival side contentions, at the outset, it may be noted that the detaining authority has accepted the statements of anonymous witnesses and has exercised powers under Section 9(2) of the PASA Act, after verifying the statements. It is recorded in the grounds of detention that the statements and fear expressed by the witnesses are found to be correct and genuine. However, if the verification is seen, the detaining authority has placed an endorsement of "verified" to indicate verification on 30th October, 1999 and the order is passed on that very day. The detaining authority has not filed any affidavit in reply for arriving at a satisfaction about the correctness and genuineness of the statements and the fear expressed by the witnesses and the need for exercise of powers under Section 9(2) of the PASA Act. In fact, the detaining authority had no time during which this exercise could have been undertaken. The authority is expected to examine the aspects of antecedents, background, character, etc. of the detenu and to make a contemporaneous record thereof. This having not done, the exercise of powers under Section 9(2) of the PASA Act can be considered improper which would affect the right of the detenu of making an effective representation, as contemplated under Article 22(5) of the Constitution (Bai Amina v. State of Gujarat & Ors, 1981 GLR 1186 and Kalidas Chandubhai Kahar v. State of Gujarat & Ors., 1993(2) GLR 1659).

6. Adverting to the offences registered against the detenu, a perusal of the First Information Report and the other relevant documents supplied to the detenu makes it abundantly clear that there was no disturbance to public order. All that was involved was a law and order situation. Resultantly, the satisfaction arrived at by the detaining authority about the activities of the detenu being detrimental to public order is without any basis. Neither the statements nor the registered offences an be accepted to form the basis of this satisfaction. The petition, therefore, deserves to be allowed.

7. In the result, the petition is allowed. The impugned order of detention dated October 30, 1999, passed against the detenu is hereby quashed. The detenu-Fakir Najir Mustufsa is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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